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No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA,
Plaintiff—Respondent,

vs.

JOSEPH L. HORVATH,
Defendant—Petitioner.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on October 8, 1970, and the denial of petition for rehearing entered on November 2, 1970.

Citation to Opinion Below

The order of the United States Court of Appeals for the Sixth Circuit, dated October 8, 1970, is attached hereto and marked Appendix A. The order denying petition for rehearing Dated November 2, 1970 is marked Appendix B.

Jurisdiction

The judgment of the Circuit Court of Appeals was en-

tered on October 8, 1970. The petition for rehearing was denied on November 2, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

Question Presented

Where a criminal case defendant is a long-time narcotic addict, and has been receiving methadone treatments and, therefore, highly susceptible to coercive tactics where methadone is concerned, was it an impermissible violation of his constitutional rights, under the 5th and 6th amendments, to extract a confession from him by promising that:

1) he would be given methadone treatment which would continue treatment in progress at time of his arrest;
2) that he would be released on low bond forthwith;
3) that his girl friend would be released on an unrelated charge

even though the promises were kept?

Statement of Facts

The defendant was first arrested in the City of Detroit, County of Wayne, State of Michigan, on June 4, 1968. He was in a motor vehicle at that time accompanied by his girlfriend, who was later to become his wife.

The arrest was for a state charge, completely unrelated to the federal charge which is involved in the appeal herein. After his arrest defendant was taken to the Detroit Police Headquarters. He was interrogated simultaneously on the state and federal charges by representatives of the FBI, and Detroit and Woodhaven, Michigan, police departments.

It is alleged that the defendant confessed to both state and federal charges on June 4, 1968, and he again confessed to the federal charge herein on the next day, June 5, 1968.

The confession to the federal charge of aiding and abetting a bank robbery was admitted into evidence at the trial below after a special hearing in the trial court on the voluntariness of his confession.

From the record below, there is testimony that several inducements were made to the defendant in exchange for his confession; namely:

1) That he would receive treatment for his heroin habit;
2) That he would receive low bond on both the state and federal charges;
3) That his girl friend would be released on an unrelated charge.

FBI Agent Michael Murray testified that he heard one of the other officers at the June 4, 1968, interrogation state to the defendant "that his girlfriend could be released if he furnished information at that time" (Tr. 33). Agent Murray also recalled becoming aware of the defendant's narcotic addiction (Tr. 35), and that he was being taken to Ford Hospital in Detroit for some medication to deal with his habit (Tr. 37, 38). He testified there was confusion when the confession was made.

Detective Sergeant Thomas Barbour, of the Detroit Police Department, also recalled similar conversation as to defendant's girlfriend and his obtaining medication for his narcotic addiction (Tr. 51, 52, 60, 62).

Both promises were fulfilled (Tr. 107, 108, 109, 112).

The second promise of low bond was also fulfilled, the defendant being given a $2,000.00 bond on the state offense (Tr. 110), and $7,500.00 on the federal charge being appealed herein (Tr. 116).

Defendant was found guilty of the federal offense charged on July 18, 1969, and was sentenced September 8,

1969 to twenty years. On October 8, 1970, the United States Court of Appeals for the Sixth Circuit affirmed the conviction below, and on November 2, 1970, the United States Court of Appeals for the Sixth Circuit denied the petition for rehearing. (See Appendix A & B).

Reasons for Granting This Writ

Defendant alleges that his confession was the result of improper inducements in violation of well-established constitutional principles. Not just one, but three improper promises were made to him in inducing his confessions. He was a heroin addict and, therefore, most susceptible to coercive tactics where his habit was concerned.

This Court stated more than 70 years ago the basic rights of a criminal defendant in *Bram* vs. *United States*, 168 U.S. 532, 542, 543 (1897):

> "But a confession, in order to be admissible, must be free and voluntary that is, must not be extracted by any sort of threats or violence, not obtained by any direct or implied promises, however, slight, *nor by the exertion of any improper influence* • • •. A confession can never be received into evidence where the prisoner has been influenced by any threats or promise for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted." (Emphasis supplied.)

In a recent case, similar to the instant cause, the District Court for E. D. Wisconsin held a confession obtained for various promises, including the release of defendant's girl friend to be invalid. *United States* v. *Harris*, 301 F. Supp. 996, 999 (E. D. Wis. 1969):

> "A confession is admissible if it was freely and voluntarily given. In ruling on the admissibility of a confession, a court must therefore determine whether the confession was voluntary, or whether it was the product of violence, threats, *or direct or implied promises, however slight.* * * * If a court should determine that a confession was the result of improper inducement, it must suppress the confession." (Emphasis supplied.)

There are serious questions as to whether the defendant herein would have been convicted without the confession. In a closely related decision of the United States Court of Appeals for the Sixth Circuit, one of the two principal defendants — those actually charged with committing the bank robbery which the present defendant was charged with aiding and abetting — had his conviction reversed due to failure of evidence. *United States* v. *Collon*, 426 F. 2d 939, 942 (6th Cir. 1970).

And under the principles enuncinted by this Court in *Payne* v. *Arkansas*, 356 U.S. 560, 567, 568 (1958), the taint of an illegally coereed confession could not be erased by other evidence.

At the special hearing conducted below, outside of the presence of the jury, to determine the "voluntariness" of the confession, the trial court failed to make an adequate determination for the purposes of determining the veracity of the defendant's allegations of coercion. His court-appointed counsel failed to subpoena key witnesses and documents which could have substantiated the defendant's allegations. There was inadequate external evidence of the processes involved in arresting and charging his girl friend with carrying a concealed weapon, and then releasing her without charge; there was inadequate external evidence

in his being given methadone treatments twice between the first confession of June 4, 1968, and the second confession of June 5, 1968 (e.g., hospital records); and there was inadequate external evidence on his allegations of receiving "low bond" on both charges as a condition of his confession.

The record below did not afford the Court of Appeals a full opportunity to check on the truth of the assertions of unconstitutional coercion made by the defendant herein.

Defendant contends that his own testimony below on coercion was "uncontradicted in its essential elements", *Haynes v. Washington*, 373 U.S. 503, 507 (1963), and that the "heavy burden of non-coercion" must be borne by the Government. *Miranda v. Arizona*, 384 U.S. 436, 475 (1966).

The record below is inadequate in reflecting directly the findings of the District Court below in both facts and law. It failed to make express findings which resolve factual disputes concerning the claimed constitutional deprivations. It never ruled on the first confession of June 4, 1968, and only admitted the second one of June 5, 1968. It said:

> "I hold very specifically that this was a voluntary statement, at least the statement made on June 5, was a voluntary statement and the motion is denied in all aspects. (Tr. 159)."

The second confession was clearly subject to the "taint" of the first. *See United States v. Bayer*, 331 U.S. 532, 540 (1947); *Barnes v. State*, 23 So. 2d 405, 407, 8 (Miss. 1945). FBI Agent Michael Murray was present at both confessions, and the time between them was only one day.

The defendant should be allowed the opportunity to present the "other testimonial and documentary evidence

relevant to the disputed issues" as required by *Townsend* v. *Sain*, 372 U.S. 293, 322 (1963);

A fuller investigation of the possible infringement of "fundamental liberties" by a reviewing court must be made if it appears

> "that the fact-finding procedure . . . was not adequate for reaching reasonable correct results • • • (and) to be seriously inadequate for the ascertainment of truth. *Bolton* v. *Kropp*, 428 F 2d 1166, 1167 (6th Cir. 1970).

Similarly, in *Jordan* v. *Cardwell*, 428 F. 2d 325, 328 (6th Cir. 1970):

> "The factual disputes and unresolved questions are critical in making a determination as to whether Jordan made a voluntary confession and a waiver of vital constitutional protections, or whether his will was overborne by the pervasive presence of law enforcement officers during his lengthy confinement.
>
> "We think Jordan has raised a serious and substantial challenge to the validity of his confession. • • • There should be additional inquiry into the circumstances of the confession before a determination is finally made as to its voluntariness."

Recent opinions from state jurisdictions have emphasized the keen protections which must be afforded to a defendant when he is in custody and gives a confession. [See, e.g., *State* v. *Williams*, 174 SE 2d 503, 507 (N.C. 1970); *State* v. *Hunter*, 456 SW 2d 314, 316 (Mo. 1970).]

In the historic decision of *Miranda* v. *Arizona*, supra, this court insisted that in-custody statements be "truly the product of free choice" (384 U.S. at 457).

> "It is obvious that such an interrogation is created for no purpose other than to subjugate the individual to the will of the examiner. This atmosphere carries

its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles — that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings no statement obtained from the defendant can truly be a product of his free choice?" 384 U.S. at 457, 458.

In a pre-Miranda case, it was made clear that the constitution:

> "forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the strongly felt attitude of our society that human values are sacrificed when an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will." *Jackson* v. *Danno*, 378 U.S. 368, 385, 386 (1964).

Respectfully submitted,
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Dated: November 30, 1970.

APPENDIX A

NO. 20,112

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSEPH LOUIS HORVATH,
Defendant-Appellant.

PER CURIAM ORDER

Before: PHILLIPS, Chief Judge, and CELEBREZZE and BROOKS, Circuit Judges

Defendant-appellant appeals from his conviction of aiding and abetting a bank robery. The only contention presented on appeal is that defendant's confession should have been excluded from evidence because it was involuntary and resulted from improper inducements of police officials.

The District Court held a hearing outside the presence of the jury and found that the confession was voluntarily made by defendant with a full understanding of his rights. Our review of the record completely supports the conclusion of the District Court.

Affirmed.

Entered by order of the Court
/s/ CARL W. REUSS
Clerk

(Filed: October 8, 1970)

APPENDIX B

No. 20,112

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSEPH LOUIS HORVATH,
Defendant-Appellant.

ORDER

Before: PHILLIPS, Chief Judge, and CELEBREZZE and BROOKS, Circuit Judges

The motion of defendant-appellant for a rehearing has been considered and is denied.

Entered by order of the Court
/s/ CARL W. REUSS
Clerk

(Filed: November 2, 1970)

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1035

JOSEPH L. HORVATH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted of aiding and abetting a bank robbery in violation of 18 U.S.C. 2 and 2213. He was sentenced to twenty years' imprisonment. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner contends here, as he did below, that his confession was made involuntarily as a result of promises that his girl friend would not be prosecuted,

that he would receive methadone treatment because of his drug addiction, and that he would receive low bond.

The district court, after a hearing outside the presence of the jury to determine if petitioner's confession was induced by threats or promises, disbelieved petitioner (II Tr. 157) and concluded that the confession was voluntarily made and that petitioner fully understood his constitutional rights. The record, as the court of appeals noted, fully supports this conclusion.

The testimony at the hearing indicated that, on June 4, 1968, petitioner confessed to a state bank robbery charge after being questioned by state and federal officers (I Tr. 13, 16, 17-18). On June 5, 1968, he admitted to the federal bank robbery charge to federal agents (I Tr. 29-33). At both times, he was instructed of his constitutional rights under *Miranda* v. *Arizona*, 384 U.S. 436, and stated that he understood them (I Tr. 13, 16, 25). The federal agents denied making any threats or promises to petitioner or that any were made in their presence on either of these occasions (*e.g.*, I Tr. 33, 34-35, 38-39; II Tr. 73, 79, 80-82, 89). The state police officer who questioned petitioner on June 4 denied that he made or heard any promises or threats concerning petitioner's girl friend or petitioner's need for methadone treatment (II Tr. 52, 57, 60-63). In these circumstances, the district court properly refused to exclude petitioner's confession.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1971.

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No. 1966

IN THE

Supreme Court of the United States

October Term, 1970

JOSEPH L. BOSVATH, Petitioner

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY MEMORANDUM

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IN THE

Supreme Court of the United States

October Term, 1970

JOSEPH L. HORVATH, Petitioner

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY MEMORANDUM

The Respondent states that the district court disbelieved petitioner (II Tr. 157) and concluded that the confession was voluntarily made and that petitioner fully understood his constitutional rights. The record, as the court of appeals noted, fully supports this conclusion.

It should be noted that the district court did not rule on the first, and crucial, confession of June 4. Its holding was specifically limited to the second confession of June 5:

II Tr. 159:

> "THE COURT: • • • I hold very specifically that this was a voluntary statement, at least the statement made on June 5 was a voluntary statement and the motion is denied in all aspects"

Yet, the second confession, of June 5, was clearly subject to the "taint" of the first confession of June 4. [See *United States* v *Bayer*, 331 US 532, 540 (1947).] And no ruling was made on the voluntariness of the first confession.

The record does not, as Respondent asserts, "fully support" the district court's "conclusion." Rather it directly contradicts Respondent's statement that

> (T)he federal agents denied making any threats or promises to petitioner or that any were made in their presence on either of these occasions . . .

FBI Agent Michael Murray testified:

I Tr. 33-4:

> "Q: Any threats or promises of any kind made on June 4, 1968 by someone else in your presence?
>
> A: I did hear mention on one occasion of one of the police officers mentioned to him that his girlfriend could be released if he furnished information at that time.
>
> Q: Do you recall what police officer made that statement?
>
> A: I do not.
>
> Q: When do you recall that remark being made, at what point in time?
>
> A: I arrived at the Holdup Bureau after I learned that he was arrested and a short time later they did bring him in there. There were a number of detectives in the room. It was very confused, a lot of confusion at that time and that's when I heard it at that point."

• • •

I Tr. 37:

> Q: Now you said, you told Mr. O'Leary that someone made the remark that his girlfriend could or would be released?
>
> A: Yes, sir, I heard some conversation about that.

Q: Was that in response to a question by Mr. Horvath of the officers?

A: I don't know. I can't say. I do not know how that came up.

Q: Do you know that he requested to be taken to Ford Hospital for some medication?

A: I recall something along those lines . . ."

Respondent then states:

> The state police officer who questioned petitioner on June 4 denied that he made or heard any promise or threats concerning petitioner's girl friend or petitioner's need for methadone treatment . . .

However, there was a very subtle, and not too hidden, implication that the girlfriend would be released upon receipt of a confession.

Detective Sergeant Thomas Barbour, of the Detroit Police Department, testified:

II Tr. 51:

> "Q: And what, if anything, was said by yourself with respect to this particular girl or anyone else in your presence that you can recall?
>
> A: As near as I can recall we inquired of the defendant, Mr. Horvath, had his girlfriend ever been arrested before. Did she have any previous record and when he told us no, we said with the offense she was charged with, I think we told him there wasn't too much to worry about her then."

• • •

II Tr. 60-1:

> "Q: Now you say that there was a conversation or some discussion about what would happen to his girl friend Mickey?
>
> A: It's not too clear but I think it did come up sometimes during the conversation, yes.
>
> Q: And would you say that came up before or after he made a statement to Special Agent Murray?

A: That came up before."

These promises were fulfilled (II Tr. 107-9, 112).

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

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January 13, 1971